IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 10820 of 2007(K)

PETITIONER:

JONACHAN, AGED 46,
S/O.OUSEPH, OVUMGAMALY HOUSE, PULLUVAZHY,
RAYAMANGALAM VILLAGE, KUNNATHUNADU TALUK.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)

RESPONDENTS:

RAYAMANGALAM GRAMA PANCHAYAT REP. BY
ITS SECRETARY, RAYAMANGALAM GRAMA PANCHAYAT
OFFICE, PULLUVAZHY, PERUMBAVOOR.

ADDITIONAL RESPONDENT

K.M. KUNJU
KAKKADAN HOUSE
PULLUVAZHY, PERUMBAVOOR

Impleaded vide order dated 9-4-07 in I.A.No.5354/07

BY ADV. SRI N K KARNIS FOR R1
ADV.SRI.ELDHO PAUL FOR R2

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

W.P.(C).No.10820 OF 2007

Dated this the 5th day of June, 2007

JUDGMENT

Petitioner has approached this court challenging ExtP4. He seeks a direction to the first respondent to execute the agreement with the petitioner as per Ext.P2 notification. Case of the petitioner in brief is as follows:

2. Respondent Panchayat is having a cattle market for the last few years. The right of collection of fees is being auctioned. Ext.P1 is the auction notice dated 17/01/2007. That auction did not take place as there was no bidder. Panchayat therefore issued Ext.P2 auction notice dated 06/02/2007. Petitioner was the highest bidder and the bid amount was Rs. 32,000/-. Ext.P3 is the receipt issued by the panchayat for having collected an amount of Rs. 34,000/- which is inclusive of value of stamp paper. According to the petitioner auction is confirmed. Ext.P4 is the notice proposing to conduct a re-auction on 28/03/07. According

to the petitioner, before proposing to conduct the re-auction, he was not heard and notified. Petitioner was the highest bidder and the auction was confirmed in his name and the entire amount together with stamp paper was collected from him, it is stated.

3. Petitioner has impleaded the second respondent, who is none other than the person in whose favour pursuant to Ext.P4 re-auction, the bid was knocked down by the Panchayat in a sum of Rs.39,250/-.

4. In the counter affidavit filed by the first respondent, the case set up is interalia stated as follows:

The bid amount was for Rs. 34,000/- and the petitioner himself voluntarily remitted the entire amount. It is the case of the panchayat that there was no invitation or direction to remit the entire amount as the auction was not confirmed by the Panchayat committee. The matter was placed before the Panchayat Committee on 21/03/2007 and it found that the amount collected from the petitioner is less by Rs. 11,000/- than the previous year and it was decided to conduct re-auction. The matter was

intimated to the petitioner through messenger on 26/03/2007. But the petitioner refused to accept the said notice and it was affixed on the conspicuous part of the residence of the petitioner in the presence of witness. Since the panchayat has not confirmed the auction in favour of the petitioner, petitioner has no right of pre-hearing, it is stated. Pursuant to Ext.R1(b), re-auction was conducted on 28/03/2007 and three persons participated in the re-auction. Additional second respondent was the highest bidder and the bid amount was Rs. 39.250/-. By Ext.R1(d), the committee decided to confirm the re-auction in favour of the additional second respondent.

5. Reply affidavit is also filed by the petitioner. According to him, Ext.R1(c) is a concocted document in an attempt to circumvent the interim order passed by this court on 28-03-2007. There is also reference to The Kerala Panchayat Raj (Procedure for Panchayat Meeting) Rules 1995.

6. Second respondent has also filed counter affidavit.

7. I heard learned counsel for the parties.

8. Learned counsel for the petitioner submits that this is a case where re-auction was without any basis. He would also complain about the haste with which the matter was confirmed inspite of the interim order passed by this court. He also refers to the meeting rules.

9. Learned counsel for the second respondent submits that pursuant to the confirmation, second respondent has been collecting the fees for the past two months and he has also invested money. Both the counsel for the Panchayat and the second respondent submits that there is no illegality.

10. The main question to be considered is whether Ext.P4 is valid or not. Ext.P4 is the re-auction notice. Petitioner bid the auction pursuant to Ext.P2. The amount which he bid was Rs. 34,000/- The amount at which the right was knocked out in the previous year is Rs. 45,100/-. Apparently on the basis of the same, Panchayat decided to go in for re-auction because the Committee refused to accept the bid of the petitioner. It is to be noted that earlier Ext.P1 was issued, but no persons participated in

the auction. The year commences from 01/04/2007 and ends on 31/03/2008. Since the amount of Rs. 34,000/- fell short by Rs.11,100/- from the previous bid amount. the Committee decided not to accept Rs. 34,000/- and decided to conduct re-auction. I do not find how the petitioner can challenge such re-auction as petitioner did not get a legal right by the mere fact that he was the highest bidder or that the Panchayat accepted Rs. 34,000/- under Ext.P3 receipt. Unless auction was confirmed in the name of the petitioner by the competent body namely the Committee, petitioner has no legal right. Even after Ext.P4 notice, the highest bid amount was Rs. 39250/-. But as correctly pointed out by the counsel for the Panchayat, the year starts on 01/04/2007and ends on 31/03/2008 and there were already three auctions. The first one did not get response and the second one evoked the bid of the petitioner which is considerably lower than the last year's amount and the last one fetching is less than the last year's bid amount. But it was the highest amount among the three auctions. In such circumstances, the Panchayat decided to confirm the auction in

favour of the second respondent. It may not be open to this court under Article 226 of the Constitution to interfere with Ext.P4 as no illegality as such is demonstrated against the issuance of Ext.P4 and conducting of the re-auction. In such circumstances, it is not necessary for me to consider the contention based on meeting rules being flouted in the matter of confirmation as petitioner has himself not established a right to impugn Ext.P4.

No doubt, learned counsel for the petitioner made a submission that reserve price may be fixed at Rs. 39,250/- and re-auction done. Having regard to the facts particularly that the second respondent has been collecting fees for the last two months, I do not think that I should accede to the request of the petitioner. Writ petition fails and it is dismissed.

K.M.JOSEPH
JUDGE

sv.